

JUN 3 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON

U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT GOODELL,

Plaintiff-Appellant,

v.

RALPHS GROCERY COMPANY, a
corporation,

Defendant-Appellee.

No. 02-16000

D.C. No. CV-00-01960-WBS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
William B. Shubb, District Judge, Presiding

Argued and Submitted May 15, 2003
San Francisco, California

BEFORE: CANBY, KLEINFELD, and RAWLINSON, Circuit Judges.

Robert Goodell appeals the district court's determination that Ralphs Grocery Co. ("Ralphs") was not required under the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq.*, to improve disabled-accessible parking spots in a common-area, multi-business parking lot. We have jurisdiction

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

pursuant to 28 U.S.C. § 1291, and we affirm.

This matter was tried to the court. The district court did not clearly err in finding that Goodell failed to prove by a preponderance of the evidence that Ralphs owned, leased, operated or exercised control over the parking lot. Evidence of ownership or lease of the lot was singularly lacking, and the evidence of the relationship of Ralphs to the operation of the lot was insufficient to compel the trier of fact to find that Ralphs had an interest in, or control over, the lot. In the absence of any such interest, the lot cannot be considered a “facilit[y]” of Ralphs, for which Ralphs would be responsible under the ADA. *See* 42 U.S.C. § 12182(a).

AFFIRMED.